

Mr. Matthew H. McCormick
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Arlington, VA 22209

May 13, 2021

Licensee/Applicant: Reier Broadcasting, Inc.
Call Signs: KBOZ (AM), KBOZ (FM), KOBB (AM),
KOBB (FM), KOZB (FM), K265AS, K240CO, K288ES
Waiver Request: FY 2016 Late Payment Penalty
Disposition: Dismissed and Denied (47 U.S.C. § 159(c)
and (d),¹ 47 CFR §§ 1.1164, 1.1166, and 1.1910)
Date Request Filed: January 13, 2017
Date FY 2016 Regulatory Fee Paid: October 18, 2016
Date Late Payment Penalty Paid: unpaid
Fee Control No.: RROG-2017-16308

Dear Mr. McCormick:

This responds to the request filed on behalf of Reier Broadcasting, Inc. (Reier) for a waiver of the penalty assessed against Reier in connection with its late payment of its Fiscal Year (FY) 2016 regulatory fees (Request).² For the reasons stated below, we deny the Request.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to assess and collect regulatory fees to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to 25 percent.⁴ Specifically, "[a]ny late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner."⁵

Each year, the Commission establishes the final day on which payment must be received before it is considered late, i.e., a deadline after which the Commission must assess charges that include the 25 percent penalty. The deadline for paying FY 2016 regulatory fees was September 27, 2016.⁶ Because Reier did not pay its fees by September 27, 2016, the Commission assessed a 25 percent penalty on each of the unpaid fees. Reier paid its FY 2016 regulatory fees on October 18, 2016 but has not paid the penalty amount.

Reier requests that we waive and refund the 25 percent penalty because its failure to timely pay its FY 2016 regulatory fees was "inadvertent and unintentional."⁷ Reier states that it submitted payment

¹47 U.S.C. § 159(c) and (d) are now codified as 47 U.S.C. § 159A(c) and (d).

² Letter from to Matthew H. McCormick, Fletcher Heald & Hildreth, 1300 North 17th Street, Arlington, VA 22209 to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street, N.W., Washington, DC 20554 (January 13, 2017, *rec'd* January 13, 2017) (Request).

³ 47 U.S.C. § 159(a).

⁴ 47 U.S.C. § 159(c), now codified at 47 U.S.C. § 159A(c); 47 CFR § 1.1164.

⁵ 47 CFR § 1.1164.

⁶ *Effective Date of FY 2016 Regulatory Fees and Multi-Year Wireless Fees No Later Than September 27, 2016, 11:59 PM Eastern Time (ET)*, Public Notice (Sept. 22, 2016), <https://www.fcc.gov/document/effective-date-fy-2016-regulatory-fees>.

⁷ Request.

via ACH on September 27, 2016 but provided the wrong bank routing number and did not discover its error until October 3, 2016.⁸ Reier also asserts that payment of the penalty has been “financially burdensome on a licensee that already is struggling to clear its back Regulatory Fees” and that a waiver and refund “will allow [Reier] to continue to devote those funds to operation of the Stations to service the residents of Bozeman, Montana, and the surrounding areas.”⁹

At the time Reier filed the Request, Reier was on red light for unpaid debt owed to the Commission; as of this writing, it remains on red light. Under Commission rules, the Request is dismissed for that reason.¹⁰

We also deny the Request on the merits. Reier requests a waiver on the grounds that its failure to timely pay its FY 2016 regulatory fee was unintentional. When we evaluate such matters, we consider whether the Request establishes the existence of bank error¹¹ or presents legal grounds or clear mitigating circumstances¹² to grant the waiver. Here, the error was committed by Reier, not its bank, and, however unintentional, the error does not rise to the level of clear mitigating circumstances, nor does it present other legal grounds on which to justify a waiver.

As an alternative and independent basis for denial of the Request, we deny Reier’s request for a waiver on financial hardship grounds. The Commission has repeatedly held that while relief may be granted on financial hardship grounds, “[m]ere allegations or documentation of financial loss, standing alone,” do not suffice and “it is incumbent upon each [party requesting a waiver to fully document its financial position and show that it lacks sufficient funds to pay the ...fee and maintain its service to the public.”¹³ On this information, the Commission considers on a case-by-case basis whether the requesting party has met its burden of proof and has demonstrated the existence of extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission’s regulatory costs.¹⁴ Reier provided no documentation supporting, and thus failed to prove, its claim of financial hardship.

Accordingly, the Request is dismissed and denied. If Reier has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

James Lyons

James Lyons
Deputy Chief Financial Officer

⁸ *Id.*

⁹ *Id.*

¹⁰ 47 CFR §§ 1.1164 and 1.1910.

¹¹ 47 CFR § 1.1164; *see also*, *NTT America, Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 8088 (2006).

¹² *See Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375, 2378, para. 6 (1979), *citing Lowndes County Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 868 (1970); *see also NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).

¹³ *See Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, Memorandum Opinion and Order, 10 FCC Rcd 12759, 12761-62, para. 13 (1995).

¹⁴ *Id.*